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WILSHIRE STATE BANK
7

8 UNITED STATES DISTRICT COURT
9 FOR THE
10 CENTRAL DISTRICT OF CALIFORNIA
11

12 MIZRAHI TEFAHOT BANK LTD,

13 Plaintiff,

14 v.

15 WILSHIRE STATE BANK,

16 Defendant and Third-
17 Party Plaintiff,

18 v.

19 YONI DISTRIBUTORS, INC., a
California corporation; YOUNESS
20 KERMEZI, an individual; ROBIN
GHERMEZI, an individual; HABIB
21 SAGHEZI, an individual; MEHRAN
HAGHANI, an individual; AMIR
22 JANNATI, an individual; DIETZ
INTERNATIONAL PUBLIC
23 ADJUSTERS OF CALIFORNIA, INC.,
a California corporation,

24 Third-Party Defendants.
25

CASE NO. CV09-9556 JFW (RCx)

**~~[PROPOSED]~~ STIPULATED
PROTECTIVE ORDER**

DISCOVERY MATTER

NOTE CHANGES MADE BY THE COURT.

1 1. PURPOSES AND LIMITATIONS

2 Disclosure and discovery activity in this action are likely to involve production of
 3 confidential, proprietary, or private information for which special protection from
 4 public disclosure and from use for any purpose other than prosecuting this litigation
 5 would be warranted. Accordingly, the Parties hereby stipulate to and petition the
 6 Court to enter the following Stipulated Protective Order (the "Order"). The Parties
 7 acknowledge that this Order does not confer blanket protections on all disclosures or
 8 responses to discovery and that the protection it affords extends only to the limited
 9 information or items that are entitled, under the applicable legal principles, to
 10 treatment as confidential. The Parties further acknowledge, as set forth in Section
 11 10, below, that this Order creates no entitlement to file confidential information under
 12 seal; Civil Local Rule 79-5 and section 9 of the Court's Standing Order set forth the
 13 procedures that must be followed and reflect the standards that will be applied when
 14 a party seeks permission from the Court to file material under seal.

15 2. DEFINITIONS

16 2.1 Party: any party to this action, including all of its officers,
 17 directors, employees, consultants, retained experts, and outside counsel (and their
 18 support staff).

19 2.2 Disclosure or Discovery Material: all items or information,
 20 regardless of the medium or manner generated, stored, or maintained (including, among
 21 other things, testimony, transcripts, or tangible things) that are produced or generated
 22 in disclosures or responses to discovery in this action.

23 2.3 "CONFIDENTIAL" Information or Items: information (regardless
 24 of how generated, stored or maintained) or tangible things that qualify for protection
 25 under standards developed under Fed. R. Civ. P. 26(c), including but not limited to
 26 confidential customer information and proprietary business information.

27 2.4 "HIGHLY CONFIDENTIAL—ATTORNEYS' EYES ONLY"
 28 Information or Items: competitively sensitive information that could cause

1 competitive harm or information that is confidential and/or proprietary as between a
2 bank and its customer.

3 2.5 Producing Party: a Party or non-party that produces Disclosure or
4 Discovery Material in this action.

5 2.6 Receiving Party: a Party that receives Disclosure or Discovery
6 Material from a Producing Party.

7 2.7 Designating Party: a Party or non-party that designates information
8 or items that it produces in disclosures or in responses to discovery as
9 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES ONLY.”

10 2.8 Protected Material: any Disclosure or Discovery Material that is
11 designated as “CONFIDENTIAL” or as “HIGHLY CONFIDENTIAL—
12 ATTORNEYS’ EYES ONLY.”

13 2.9 Outside Counsel: attorneys who are not employees of a Party but
14 who are retained to represent or advise a Party in this action (as well as their support
15 staff).

16 2.10 In-House Counsel: attorneys who are employees of a Party (as well
17 as their support staff).

18 2.11 Counsel (without qualifier): Outside Counsel and In-House
19 Counsel (as well as their support staffs).

20 2.12 Expert: a person with specialized knowledge or experience in a
21 matter pertinent to the litigation who has been retained by a Party or its Counsel to
22 serve as an expert witness or as a consultant in this action and who is not a past or a
23 current employee of a Party or of a competitor of a Party’s and who, at the time of
24 retention, is not anticipated to become an employee of a Party or a competitor of a
25 Party’s. This definition includes a professional jury or trial consultant retained in
26 connection with this litigation.

27 2.13 Professional Vendor(s): persons or entities that provide litigation
28 support services (e.g., photocopying; videotaping; translating; preparing exhibits or

1 demonstrations; organizing, storing, retrieving data in any form or medium; etc.) and
2 their employees and subcontractors.

3 3. SCOPE

4 The protections conferred by this Stipulation and Order cover not only
5 Protected Material (as defined above), but also any information copied or extracted
6 therefrom, as well as all copies, excerpts, summaries, or compilations thereof, plus
7 testimony, conversations, or presentations by Parties or Counsel to or in Court or in
8 other settings that might reveal Protected Material.

9 4. DURATION

10 Even after the termination of this litigation, the confidentiality obligations
11 imposed by this Order shall remain in effect until a Designating Party agrees otherwise
12 in writing or a Court order otherwise directs.

13 5. DESIGNATING PROTECTED MATERIAL

14 5.1 Exercise of Restraint and Care in Designating Material for
15 Protection. Each Party or non-party that designates Disclosure or Discovery
16 Material for protection under this Order must take care to limit any such designation
17 to specific material that qualifies under the appropriate standards. A Designating
18 Party must take care to designate for protection only those parts of material,
19 documents, items, or oral or written communications that qualify so that other portions
20 of the material, documents, items, or communications for which protection is not
21 warranted are not swept unjustifiably within the ambit of this Order.

22 If it comes to a Designating Party's attention that information or items
23 that it designated for protection do not qualify for protection or do not qualify for the
24 level of protection initially asserted, the Designating Party must promptly notify all
25 other Parties that it is withdrawing the mistaken designation.

26 5.2 Manner and Timing of Designations. Except as otherwise provided in
27 this Order (see, e.g., second paragraph of sections 5.2(a) and 5.2(b), below), or as
28 otherwise stipulated or ordered, material that qualifies for protection under this Order

1 must be clearly so designated before the material is disclosed or produced.

2 Designation in conformity with this Order requires:

3 (a) for information in documentary form (apart from transcripts
4 of depositions or other pretrial or trial proceedings), that the Producing Party affix the
5 legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL—ATTORNEYS' EYES
6 ONLY" on each page that contains Protected Material. If only a portion or portions
7 of the material on a page qualifies for protection, the Producing Party also must clearly
8 identify the protected portion(s) (e.g., by making appropriate markings in the margins)
9 and must specify, for each portion, the level of protection being asserted (either
10 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL—ATTORNEYS' EYES
11 ONLY").

12 A Party or non-party that makes original documents or materials
13 available for inspection need not designate them for protection until after the
14 inspecting Party has indicated which material it would like copied and produced.
15 During the inspection and before the designation, all of the material made available for
16 inspection shall be deemed "HIGHLY CONFIDENTIAL—ATTORNEYS' EYES
17 ONLY." After the inspecting Party has identified the documents it wants copied and
18 produced, the Producing Party must determine which documents, or portions thereof,
19 qualify for protection under this Order, and then, before producing the specified
20 documents, the Producing Party must affix the appropriate legend
21 ("CONFIDENTIAL" or "HIGHLY CONFIDENTIAL—ATTORNEYS' EYES
22 ONLY") at the top of each page that contains Protected Material. If only a portion or
23 portions of the material on a page qualifies for protection, the Producing Party also
24 must clearly identify the protected portion(s) (e.g., by making appropriate markings
25 in the margins) and must specify, for each portion, the level of protection being
26 asserted (either "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL—
27 ATTORNEYS' EYES ONLY").

28 (b) for testimony given in deposition or in other pretrial or trial

1 proceedings, that the Designating Party identify on the record, before the close of the
 2 deposition, hearing, or other proceeding, any portions of the testimony that qualify as
 3 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES ONLY.”
 4 Following the deposition, hearing, or other proceeding, the Designating Party shall
 5 have 20 days after the transcript becomes available to identify the specific portions of
 6 the testimony as to which protection is sought and to specify the level of protection
 7 being asserted (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL—
 8 ATTORNEYS’ EYES ONLY”). Only those portions of the testimony that are
 9 appropriately designated for protection within the 20 days shall be covered by the
 10 provisions of this Order.

11 Transcript pages containing Protected Material must be separately
 12 bound by the Court reporter, who must affix to the top of each such page the legend
 13 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES ONLY,”
 14 as instructed by the Designating Party.

15 (c) for information produced in some form other than
 16 documentary, and for any other tangible items, that the Producing Party affix in a
 17 prominent place on the exterior of the container or containers in which the information
 18 or item is stored the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL—
 19 ATTORNEYS’ EYES ONLY.” If only portions of the information or item warrant
 20 protection, the Producing Party, to the extent practicable, shall identify the protected
 21 portions, specifying whether they qualify as “CONFIDENTIAL” or as “HIGHLY
 22 CONFIDENTIAL—ATTORNEYS’ EYES ONLY.”

23 5.3 Inadvertent Failures to Designate. If timely corrected, an
 24 inadvertent failure to designate qualified information or items as “CONFIDENTIAL”
 25 or “HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES ONLY” does not, standing
 26 alone, waive the Designating Party’s right to secure protection under this Order for
 27 such material. If material is appropriately designated as “CONFIDENTIAL” or
 28 “HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES ONLY” after the material was

1 initially produced, the Receiving Party, on timely notification of the designation, must
 2 make reasonable efforts to assure that the material is treated in accordance with the
 3 provisions of this Order.

4 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

5 6.1 Timing of Challenges. Unless a prompt challenge to a Designating
 6 Party's confidentiality designation is necessary to avoid foreseeable substantial
 7 unfairness, unnecessary economic burdens, or a later significant disruption or delay of
 8 the litigation, a Party does not waive its right to challenge a confidentiality designation
 9 by electing not to mount a challenge promptly after the original designation is
 10 disclosed.

11 6.2 Meet and Confer. A Party that elects to initiate a challenge to a
 12 Designating Party's confidentiality designation must do so in good faith and must begin
 13 the process by conferring directly (in voice to voice dialogue; other forms of
 14 communication are not sufficient) with Counsel for the Designating Party. In
 15 conferring, the challenging Party must explain the basis for its belief that the
 16 confidentiality designation was not proper and must give the Designating Party an
 17 opportunity to review the designated material, to reconsider the circumstances, and, if
 18 no change in designation is offered, to explain the basis for the chosen designation. A
 19 challenging Party may proceed to the next stage of the challenge process only if it has
 20 engaged in this meet and confer process first.

21 6.3 Judicial Intervention. A Party that elects to press a challenge to a
 22 confidentiality designation after considering the justification offered by the
 23 Designating Party may file and serve a motion, ^{with joint stipulation under L.R. 37} ~~pursuant to the rules and orders of~~
 24 ~~this Court,~~ that identifies the challenged material and sets forth in detail the basis for
 25 the challenge. The burden of persuasion in any such challenge proceeding shall be on
 26 the Designating Party. Until the Court rules on the challenge, all Parties shall continue
 27 to afford the material in question the level of protection to which it is entitled under
 28 the Producing Party's designation.

1 7. ACCESS TO AND USE OF PROTECTED MATERIAL

2 7.1 Basic Principles. A Receiving Party may use Protected Material
3 that is disclosed or produced by another Party or by a non-party in connection with
4 this case only for prosecuting, defending, or attempting to settle this litigation. Such
5 Protected Material may be disclosed only to the categories of persons and under the
6 conditions described in this Order. When the litigation has been terminated, a
7 Receiving Party must comply with the provisions of section 11, below (FINAL
8 DISPOSITION).

9 Protected Material must be stored and maintained by a Receiving Party
10 at a location and in a secure manner that ensures that access is limited to the persons
11 authorized under this Order.

12 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
13 otherwise ordered by the Court or permitted in writing by the Designating Party, a
14 Receiving Party may disclose any information or item designated CONFIDENTIAL
15 only to:

16 (a) the Receiving Party's Outside Counsel of record in this
17 action, as well as employees of said Counsel to whom it is reasonably necessary to
18 disclose the information for this litigation;

19 (b) the officers, directors, and employees (including In-House
20 Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this
21 litigation;

22 (c) Experts (as defined in this Order) of the Receiving Party to
23 whom disclosure is reasonably necessary for this litigation and who have signed, or
24 agreed under oath and on the record to be bound by, the "Agreement to Be Bound by
25 Protective Order" (Exhibit A);

26 (d) the Court and its personnel;

27 (e) Court reporters, their staffs, and Professional Vendors (and
28 their staff) to whom disclosure is reasonably necessary for this litigation and who have

1 signed the "Agreement to Be Bound by Protective Order" (Exhibit A);

2 (f) during their depositions or at trial, witnesses in the action to
3 whom disclosure is reasonably necessary and who have signed the "Agreement to Be
4 Bound by Protective Order" (Exhibit A). Pages of transcribed deposition testimony
5 or exhibits to depositions that reveal Protected Material must be separately bound by
6 the Court reporter and may not be disclosed to anyone except as permitted under this
7 Stipulated Protective Order;

8 (g) the author of the document or the original source of the
9 information, or witnesses who have already received a copy of the Protected Material
10 from the author of the document or the original source of the information as evident from
11 the face of the material;

12 (h) any other person authorized by order of the Court or prior
13 written consent of the Producing Party or third party.

14 7.3 Disclosure of "HIGHLY CONFIDENTIAL—ATTORNEYS'
15 EYES ONLY" Information or Items. Unless otherwise ordered by the Court or
16 permitted in writing by the Designating Party, a Receiving Party may disclose any
17 information or item designated "HIGHLY CONFIDENTIAL—ATTORNEYS' EYES
18 ONLY" only to:

19 (a) the Receiving Party's Outside Counsel of record in this
20 action, as well as employees of said Counsel to whom it is reasonably necessary to
21 disclose the information for this litigation;

22 (b) Experts (as defined in this Order) to whom disclosure is
23 reasonably necessary for this litigation and who have signed, or agreed under oath and
24 on the record to be bound by, the "Agreement to Be Bound by Protective Order"
25 (Exhibit A);

26 (c) the Court and its personnel;

27 (d) Court reporters, their staffs, and Professional Vendors (and
28 their staff) to whom disclosure is reasonably necessary for this litigation and who have

1 signed the "Agreement to Be Bound by Protective Order" (Exhibit A); and

2 (e) the author of the document or the original source of the
3 information, or witnesses who have already received a copy of the Protected Material
4 from the author of the document or the original source of the information as evident from
5 the face of the material;

6 (f) any other person authorized by order of the Court or prior
7 written consent of the Producing Party or third party.

8 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED
9 PRODUCED IN OTHER LITIGATION.

10 If a Receiving Party is served with a subpoena or an order issued in other
11 litigation that would compel disclosure of any Disclosure or Discovery Material
12 designated in this action as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL—
13 ATTORNEYS' EYES ONLY," the Receiving Party must so notify the Designating Party
14 in writing (by fax, if possible) immediately and in no event more than three Court days
15 after receiving the subpoena or order. Such notification must include a copy of the
16 subpoena or order.

17 The Receiving Party also must immediately inform in writing the Party who
18 caused the subpoena or order to issue in the other litigation that some or all the
19 material covered by the subpoena or order is the subject of this Order. In addition, the
20 Receiving Party must deliver a copy of this Order promptly to the Party in the other
21 action that caused the subpoena or order to issue.

22 The purpose of imposing these duties is to alert the interested Parties to the
23 existence of this Order and to afford the Designating Party in this case an opportunity
24 to try to protect its confidentiality interests in the Court from which the subpoena or
25 order issued. The Designating Party shall bear the burdens and the expenses of
26 seeking protection in that Court of its CONFIDENTIAL material and nothing in these
27 provisions should be construed as authorizing or encouraging a Receiving Party in
28 this action to disobey a lawful directive from another Court.

1 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

2 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
3 Protected Material to any person or in any circumstance not authorized under this
4 Order, the Receiving Party must immediately (a) notify in writing the Designating
5 Party of the unauthorized disclosures, (b) use its best efforts to retrieve all copies of
6 the Protected Material, (c) inform the person or persons to whom unauthorized
7 disclosures were made of all the terms of this Order, and (d) request such person or
8 persons to execute the "Agreement to Be Bound by Protective Order" that is attached
9 hereto as Exhibit A.

10 10. FILING PROTECTED MATERIAL. Without written permission from
11 the Designating Party or a Court order secured after appropriate notice to all interested
12 persons, a Party may not file in the public record in this action any Protected Material.
13 A Party that seeks to file under seal any Protected Material must comply with Civil
14 Local Rule 79-5 and the Court's Standing Order.

15 11. FINAL DISPOSITION. Unless otherwise ordered or agreed in writing
16 by the Producing Party, within sixty (60) days after the final termination of this action,
17 each Receiving Party must return all Protected Material to the Producing Party. As
18 used in this subdivision, "all Protected Material" includes all copies, abstracts,
19 compilations, summaries or any other form of reproducing or capturing any of the
20 Protected Material. With permission in writing from the Designating Party, the
21 Receiving Party may destroy some or all of the Protected Material instead of returning
22 it. Whether the Protected Material is returned or destroyed, the Receiving Party must
23 submit a written certification to the Producing Party (and, if not the same person or
24 entity, to the Designating Party) by the sixty day deadline that identifies (by category,
25 where appropriate) all the Protected Material that was returned or destroyed and that
26 affirms that the Receiving Party has not retained any copies, abstracts, compilations,
27 summaries or other forms of reproducing or capturing any of the Protected Material.
28 Notwithstanding this provision, Counsel are entitled to retain an archival copy of all

1 pleadings, motion papers, transcripts, legal memoranda, correspondence, or attorney
 2 work product, even if such materials contain Protected Material. Any such archival
 3 copies that contain or constitute Protected Material remain subject to this Protective
 4 Order as set forth in Section 4 (DURATION), above.

5 12. PRIVILEGED DOCUMENTS

6 Pursuant to Federal Rule of Evidence 502(b), if information subject to a claim
 7 of attorney-client privilege, attorney work product, or any other ground on which
 8 production of such information should not be made to any party is nevertheless
 9 inadvertently produced to a party, such production shall in no way prejudice or
 10 otherwise constitute a waiver of, or estoppel as to, any claim of privilege, work
 11 product or other ground for withholding production to which the Producing Party
 12 would otherwise be entitled. If a claim of inadvertent production is made with
 13 respect to information then in the custody of another party, or the information
 14 appears on its face to have been inadvertently produced, the Receiving Party shall
 15 within ten (10) business days return the information to the claiming party or person
 16 and the Receiving Party shall not use such information for any purpose other than in
 17 connection with a motion to compel (which shall be filed under seal). The party
 18 returning such material may then move the Court for an Order compelling ^{after complying with local Rule 37,}
 19 production of the material, which shall be filed under seal, and said motion shall not
 20 assert as a ground for entering such an Order the fact or circumstances of the
 21 inadvertent production.

22 The Producing Party must provide a privilege log in place of any returned or
 23 destroyed materials, and must preserve the materials at issue until any challenge to
 24 the claimed privilege or protection is resolved. In the case of electronically stored
 25 information, the Producing Party may agree in its sole discretion to provide certain
 26 requested materials for initial examination; provided, however, that such provision
 27 will not waive any applicable privilege or protection that protects such materials
 28 from disclosure.

1 In connection with any privilege log prepared pursuant to Federal Rule of
 2 Civil Procedure 26(b)(5), the parties agree that communications between a party and
 3 its Counsel, originating on or after the date of the filing of the initial complaint in
 4 this action, on December 30, 2009, need not be logged.

5 13. MISCELLANEOUS

6 12.1 Right to Further Relief. Nothing in this Order abridges the right
 7 of any person to seek its modification by the Court in the future.

8 12.2 Right to Assert Other Objections. By stipulating to the entry of
 9 this Order no Party waives any right it otherwise would have to object to disclosing or
 10 producing any information or item on any ground not addressed in this Order.
 11 Similarly, no Party waives any right to object on any ground to use in evidence of any
 12 of the material covered by this Order.

13 12.3 Admissibility. Nothing herein shall be construed to affect in any
 14 manner the admissibility at trial or in any other proceeding of any document,
 15 testimony, or other evidence.

16
 17 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

18 DATED: April 8, 2010

FRIEDEMANN GOLDBERG LLP

19
 20 By: /s/ Kyle M. Fisher
 21 KYLE M. FISHER
 22 Attorneys for Defendant and Third-
 23 Party Plaintiff
 WILSHIRE STATE BANK

24 DATED: April 8, 2010

ARNOLD & PORTER

25
 26 By: /s/ Brian K. Condon
 27 BRIAN K. CONDON
 28 Attorneys for Plaintiff
 MIZRAHI TEFAHOT BANK
 LTD.

1 PURSUANT TO STIPULATION, IT IS SO ORDERED; *as amended at*
2 *paragraphs 6, 3 and 12.*

3 Dated: 4/12, 2010


United States Magistrate Judge

EXHIBIT A

AGREEMENT TO BE BOUND BY PROTECTIVE ORDER

I, _____, [print or type full name], of
_____, [print or type full address], declare
under penalty of perjury that I have read in its entirety and understand the Stipulated
Protective Order that was issued by the United States District Court for the Central
District of California on [date] in the case *Mizrahi Tefahot Bank Ltd. v. Wilshire*
State Bank, et al., United States District Court-Central District Case No. CV 09-
09556 JFW (RCx). I agree to comply with and to be bound by all the terms of this
Stipulated Protective Order and I understand and acknowledge that failure to so
comply could expose me to sanctions and punishment in the nature of contempt. I
solemnly promise that I will not disclose in any manner any information or item that
is subject to this Stipulated Protective Order to any person or entity except in strict
compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District
Court for the Central District of California for the purpose of enforcing the terms of
this Stipulated Protective Order, even if such enforcement proceedings occur after
termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____